APPEAL NO. 92121

On February 13, 1992, a contested case hearing was held in _____, Texas, with (hearing officer) presiding. (Hearing officer) determined that the claimant, respondent herein, sustained a compensable heart attack on (date of injury) in the course and scope of his employment as a parts monitor with (employer), due to heavy lifting mandated by a change in the scope of respondent's work.

The appellant asks that the decision be reviewed and reversed. Specifically, the appellant complains of Finding of Fact No. 7, and of Conclusion of Law No. 3, arguing that the respondent did not prove, through a preponderance of the medical evidence, that his work was a substantial contributing factor to his heart attack, rather than any pre-existing heart condition. The appellant further argues that there is insufficient evidence that any specific event caused the heart attack. Appellant does not appeal the finding of fact that respondent had neither experienced symptoms nor had a history of heart disease prior to (date of injury). Respondent asks that the decision be upheld.

DECISION

Finding no error in the findings and conclusions of the hearing officer, we affirm his decision.

Respondent, who was 56 at the time of the heart attack, had been employed as a parts monitor for employer for seven years. Promotion to this position was based on seniority and portrayed as a desirable job with low stress and the ability of the worker to serve more as his own boss. As parts monitor, respondent was responsible for keeping the auto assembly lines supplied with necessary parts and supply, delivering and ferrying these to the work stations several times per day. Essential supplies to the lines included "door stops," which were required to hold open the doors of cars during the assembly process. Customarily, respondent had loaded these stops into containers on a "buggy" and carried them up an elevator to an assembly area.

On Monday, September 23, 1991, respondent came to work to discover that his tasks had changed in one respect. An assembly line had been moved downstairs to the area where he customarily picked up doorstops. A metal track in this area prevented him from pushing his buggy up to the doorstops, and he therefore had to carry containers of doorstops approximately 20-25 feet, across the line, to load onto his buggy. He stated that the containers weighed from 75-85 lbs each, and he had to load two containers four or five times a day.

Respondent filed a grievance the following day, asking for a forklift to move the containers. He stated that he had some stomach problems and indigestion that day.

On (date of injury), respondent arrived at work around 5:00 a.m., his usual starting

time. He began loading the doorstops, and stated that it was during this particular work of lifting the door stops and going across the line that he felt a stinging sensation in his chest. Thereafter, as he went about his task, his left arm and chest started hurting. Respondent testified, and two coworkers confirmed, that he went to the locker room about 6:00-6:30 a.m., complaining of chest and arm pain and sweating, and laid down on a bench. Respondent stated that his chest pain abated somewhat, although his arm continued to hurt, and he completed his work that day. He went home, took a hot shower, and went to bed without dinner.

The next morning, instead of going in to work, he went to the office of Dr. A, who examined him and had him hospitalized after an EKG indicated that respondent had suffered a heart attack. After a "scope" examination, "balloon" surgery (presumably an angioplasty) was performed. Respondent remained in the hospital 13 days total. At the time of the hearing, he expected to return to work within two weeks, although the parts monitor position had been assigned to someone else because respondent was absent more than 60 days.

Respondent entered three doctors' statements into evidence. A statement from Dr. A said that respondent had been under his care since February 1989 and at no time had been treated for chest pain or heart condition. Respondent's family doctor, Dr. S, stated that he treated respondent for the past 10-20 years and that at no time through his most recent visit of 1/18/91 had he had symptoms of organic heart disease. Finally, his cardiologist, Dr. R, wrote on January 7, 1992, "The physical activity such as lifting involved at the time of the heart attack played a role in causing his myocardial infarction."

The hearing officer took official notice of the report of the benefit review officer (BRO), dated a month before the contested case hearing. The BRO's report notes "[Respondent] obtained some medical evidence, although not in depth, it is unchallenged by the carrier . . . The carrier failed to produce any significant evidence controverting medical and no specific testimony that the incident did not occur." Surprisingly, notwithstanding the discovery tools available under the Act, and rules of the Texas Workers' Compensation Commission, the minimal defense noted by the BRO did not appear to have changed a month later. Although it can be reasonably surmised that the hospital records might have demonstrated whether there was a preexisting heart condition, appellant based its defense simply on cross-examination and a single line item from an October 7, 1991, physician report completed by Dr. R, in which he checked "No" in response to the question "In your opinion, is the patient's disability caused by work for [employer] or any other employer?" Consequently, there is no evidence in the record of any heart disease or condition before the heart attack occurred.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. Art. 8308-6.34(e) (Vernon's Supp. 1992) (1989 Act). His decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence (which it does not

here) that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In reviewing a point of "insufficient evidence," if the record considered as a whole reflects probative evidence supporting the decision of the trier of fact, we will overrule a point of error based upon insufficiency of evidence. Highlands Insurance Co. v. Youngblood, 820 S.W.2d 242 (Tex. Civ. App.-Beaumont 1991, no writ). We do not substitute our judgment for that of the hearing officer when his findings are supported by some evidence of probative value, and are not against the great weight and preponderance of the evidence. Texas Employer's Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. Civ. App.-Texarkana 1989, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred within the course and scope of employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). A claimant must link the contended physical injury to an event at the workplace and the trier of fact may chose to reconcile conflicting evidence about the injury either for or against the claimant. Johnson v. Employers' Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Any conflict among medical witnesses is a matter to be resolved by the trier of fact. Highlands Underwriters Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ).

The facts asserted concerning compensability of a heart attack must, however, be analyzed in light of the requirements of the 1989 Act, Art. 8308-4.15. Most significantly, that statute requires that "(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack." As we noted in Texas Workers' Compensation Commission Appeal No. 91009 (Docket No. AM-00005-91-CC-1) decided September 4, 1991, and more recently in Texas Workers' Compensation Commission Appeal No. 92115 (Docket No. DA-A-083472-01-CC-DA41) decided May 4, 1992, this provision requires a comparison or weighing between the conditions leading to a heart attack. The statute requires that the trier of fact compare medical evidence of the work-related factors against the preexisting disease or condition, and conclude that it was the work rather than the natural progression of the disease or condition that was a substantial contributing factor of the attack.

The hearing officer here has determined the preponderance of medical evidence was in respondent's favor. In the complete absence of medical evidence (or even lay testimony for that matter) of a preexisting heart condition, the hearing officer essentially was faced with weighing the existing medical evidence concerning the work relation to the injury against a void. Weighed against "zero" evidence of any preexisting disease or that such was a factor at all, Dr. R's assertion that respondent's lifting at the time of the attack "played a role" in

causing the attack leads to the permissible inference and conclusion that the "work" was a substantially contributing factor.

So far as attribution of the attack to a specific event, there is sufficient probative evidence to support the determinations of the hearing officer. Appellant emphasizes, somewhat out of context, that the respondent suffered his attack "while he was around" the doorstops. The record as a whole, however, establishes the link between the morning's lifting activity on (date of injury), and the myocardial infarction sustained by respondent. We affirm the hearing officer's decision.

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Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

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Robert W. Potts
Appeals Judge